

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

CRP.No. 937 of 2007()

**AGAINST THE ORDER DATED 11/10/2007 IN EP 150/ 2004 IN
OS.134/1998 of MUNSIF COURT, TIRUR**
.....

REVN. PETITIONER: PETITIONER/2ND RESPONDENT/2ND J.D

**M.P.ABDUL SAMAD, 6/13, MANCHERI PARAMBIL
HOUSE, KANAL, TIRUR - 676 101, MALAPPURAM
DISTRICT.**

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS: PETITIONER/DECREE HOLDER/JDS 1 AND 3

- 1. NEDUNGADI BANK LTD.,
(NOW PUNJAB NATIONAL BANK AS PER THE
NEDUNGADI BANK LTD).,REPRESENTED BY THE
BRANCH MANAGER, TIRUR.**
- 2. ALOOR GOPINATH, S/O.VELAYUDHAN,
RAHINA NO.1 QUARTERS, PAN BAZAR, TIRUR.**
- 3. ALOOR DASAN, S/O.VELAYUDHAN,
SAVITHRI SADAN, PAYYANANGADI,
TIRUR.**

BY

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

M.N. KRISHNAN, J.
= = = = =
C.R.P. NO. 937 OF 2007
= = = = =
Dated this the 29th day of October, 2007.

O R D E R

This revision petition is preferred against the order in execution petition E.P.150/04 in O.S.134/98 whereby the Court has directed the 2nd respondent to be committed to civil prison. It is true that the unfortunate revision petitioner is only a surety but as per Section 128 of the Contract Act the liability of him is co-extensive with that of the principal debtor and therefore cannot shirk the liability. At the time of receiving the loan this surety has also executed a document whereby he has submitted that he is having a cash balance of Rs.8,000/- and movables worth Rs.40,000/-. He has also submitted that he is a goldsmith by profession and is getting sufficient income from the work. Now, when it has reached the execution stage he wants to submit that he had signed only in a blank signed paper and it has been misused by the

Bank authorities. It is a normal practice that when an amount is advanced the Bank used to test the sufficiency of security and it was only in that context Ext.A1 was executed by the present revision petitioner. He cannot be permitted to blow hot and cold simultaneously. Therefore, I agree with the Court below that he is having sufficient means to wipe off the liability. The learned counsel for the revision petitioner submits that some indulgence may be shown especially for the reason that he is not the person who has enjoyed the fruits of the loan. There is some force in the said contention. I therefore, dispose of the writ petitioner as follows.

(1) The finding on means is confirmed.

(2) The revision petitioner is permitted to pay the decree debt in four monthly equal instalments and the first instalment is to commence on 29.11.07.

(3) If he commits default of two consecutive instalments, then he is liable to forfeit the benefit given by this order and the decree holder can request the Court below to execute the warrant of arrest.

CRP NO. 937 of 2007

-:3:-

(4) Till such time the present revision petitioner shall not be arrested and send to civil prison.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-